



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 15, 2023

IN THE MATTER OF:

Appeal Board No. 628984

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective October 20, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by CHESTNUT MARTS INC prior to October 20, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 04, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that further testimony and evidence should be taken before a decision is issued, particularly with respect to the question of whether the claimant invited his discharge when the subject of sleeping in his car while on duty was raised by the area manager on October 19, 2023, and also to assist with deciding credibility.

At the remand hearing, the claimant should be confronted with his hearing request of December 7, 2022, and given an opportunity to explain why the information he provided in that document regarding the reason for his discharge conflicts with the sworn testimony he gave at the prior hearings.

The document should then be entered into evidence in the appropriate manner.

The employer is directed to produce Menet Oral and Claudio Duque at the remand hearing, in the event that further testimony is required of them.

We further note that although a subpoena was issued for the appearance of the claimant's former manager, Heildy Cordair, after the February 27, 2023 hearing was adjourned, the date of the subsequent hearing was changed and an amended subpoena was not issued for the rescheduled hearing held on April 3, 2023. We have determined that Ms. Cordair is a necessary witness and that another subpoena should be issued to compel her testimony at the remand hearing. Ms. Cordair should be questioned about her involvement in the incident(s) that led to the claimant's separation from employment.

The parties may produce any other relevant witnesses and documents. The Judge may take any further testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that a subpoena be issued to Heidy Cordair; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER